

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

CONFERENCE CALL

WITH

**AMBASSADOR JOHN D. NEGROPONTE,
DIRECTOR OF NATIONAL INTELLIGENCE**

AND

A SENIOR INTELLIGENCE OFFICIAL

**WEDNESDAY, SEPTEMBER 13, 2006
6:25 P.M. EDT**

CHAD KOLTON (Director, Public Affairs, ODNI): Let me just start by saying this is Chad Kolton with the Director of National Intelligence, introducing in just a second Director Negroponte, who will make a couple of opening remarks about Common Article 3. We've only got about 15 minutes for the call, so we'll have a limited time, but some time for questions after the ambassador's statement is over. We'll also have a senior intelligence official for background.

And with that, I will turn the call over to Ambassador Negroponte.

AMB. NEGROPONTE: Yeah. And I'm on the record, right, Chad?

(No audible response.)

Well, good evening, ladies and gentlemen. The purpose of this call is to talk about the current legislation that is being offered by the Senate Armed Services Committee, which is going to be offered tomorrow. And the bottom line that I wanted to convey to you is that if it goes forward as proposed in the Armed Services Committee, that this is – will not allow for the High-Value Terrorist Detention Program, the CIA High-Value Terrorist Detention Program, that was described by the President on the 6th of September, to go forward.

And now I'd just like to give you a brief explanation as to why that would be the case.

You'll recall that the President, in his speech, described the CIA program and characterized it as one of the most valuable, if not THE most valuable source of human intelligence that we have with respect to al Qaeda. Until the Hamdan decision was handed down by the Supreme Court, the position of the government, of the administration, was that the Geneva Convention, and specifically Common Article 3, did not apply to these detainees who were being held as unlawful enemy combatants. When the court handed down its decision to the effect that the Geneva Conventions do apply and that Common Article 3 applies, the President, out of – in his desire to comply with that decision, has sent legislation to the Congress, which, among other things, would clarify the meaning of that obligation under Geneva by stipulating that compliance

with our domestic law, and most specifically the Detainee Treatment Act of 2005, would constitute fulfillment of our obligations under the Geneva Convention.

In other words, this isn't an attempt not to alter Geneva nor to avoid the purposes of Geneva but, rather, to give it the kind of clarity that we felt was required because we feel there are parts of Common Article 3 under the Geneva Convention that are vague and have never been previously clarified. And we believe this kind of clarification was necessary in order to give the certainty needed by individuals, patriotic Americans who are carrying out their obligations and their professional duties in this war on terror, to give them the kind of certainty that they needed in order to feel comfortable that they were carrying out these responsibilities in a lawful manner. And the proposed legislation that we have put forward we believe squares this circle of describing and defining our obligations under Geneva in terms of implementing the Detainee Treatment Act of 2005.

Regrettably, the draft legislation that is before the Senate Armed Services Committee at the moment doesn't do this, and doesn't offer the kind of clarity and clarification that we believe is necessary with regard to these international obligations of ours. And if this draft legislation were passed in its present form, the director of the Central Intelligence Agency has told me that he did not believe that the program could go forward.

So those are the comments that I have to make. I do have a senior intelligence official on the line, who, as Mr. Kolton said, could be quoted as a "senior intelligence official," if there's any question that I feel I need to refer to him.

MR. KOLTON: Okay, with that, Operator, if there are questions that people want to queue up, we can go ahead and move to that portion of the call.

Q: Yes, sir. My question is, would this – the President's legislation would authorize different methods of interrogation, aside from those that the military has limited its methods to. And which part of Common Article 3 are you worried about? Outrages upon personal dignity? It's all vague, but what is the one you are most concerned about?

AMB. NEGROPONTE: Well, on the first question, without getting into specific techniques, of course the Army Field Manual would apply to interrogations by the military. Whatever techniques are used, we of course, would not condone the use of torture or cruel treatment.

With respect to what parts of Common Article 3 of the Geneva Conventions give us the most difficulty, perhaps I could defer to the senior intelligence official.

SENIOR INTELLIGENCE OFFICIAL: Yeah, I guess I would agree with you that, you know, it's all vague, so it's hard to say which one's the most vague and the least vague. Certainly, you've picked out one – "outrages upon personal dignity." And then it goes on to talk about humiliating or degrading treatment with kind of no anchor to American law. And that anchor to American law, of course, dates back many decades now, where the Senate, when it ratified the Convention Against Torture, was concerned about such vagueness and attached a

reservation to that treaty tying it to U.S. law so we weren't exposing people who were trying to protect America to the vagueness.

So it's always difficult to pick out the most vague provision, but certainly "outrages upon personal dignity" is one that would be toward the top of the list.

Q: Would you – can you summarize the new standards you have as the one that was in the Detainee Protection Act, which was "shocks the conscience?" Is that the way we should look at the standard you would employ?

SENIOR INTELLIGENCE OFFICIAL: Well, what we would employ is exactly what is in the Detainee Treatment Act: "cruel, inhuman, degrading treatment," as defined under the U.S. Constitution, specifically the Fifth, Eighth, and 14th Amendments of the U.S. Constitution. So we have a definite body of case law and decisions that we can look to and advise operators on.

MR. KOLTON: Okay, let's take the next question.

Q: Thank you, Ambassador Negroponte. I wanted to ask, you said that if the current form of the legislation in the Senate Armed Services Committee moves forward, that the CIA's High-Value Terrorist Detention Program could not proceed. What specifically – which part of the – I mean, my understanding is the two pieces of legislation have a lot of common ground. What specifically in the Senate Armed Services Committee legislation would prevent the CIA high-value terrorist detention program from going forward?

AMB. NEGROPONTE: Well, let me put it in my own words, then I'm going to ask the senior intelligence official to amplify.

But in our draft legislation that we sent up, we make this link – an important one, we believe – between our domestic legislation and the Detainee Treatment Act, and we – and it – and we stipulate that compliance with our Detainee Treatment Act would constitute fulfillment of our obligations under Geneva. And that link between our domestic law and the interpretation of our obligations under Geneva, which now the Supreme Court has ruled applies to these situations, is missing in the Senate bill.

But I would ask, since this is so legal a matter, I'd ask the senior intelligence official to amplify what I just said.

SENIOR INTELLIGENCE OFFICIAL: I have little to add to what the DNI said. You know, as I understand it, they would not tie those obligations to our domestic law, thus making it – you know, leaving a vague, undefined general terms out there that would prevent us from going forward with the program.

Q: Thank you.

MR. KOLTON: All right, take the next question.

Q: Mr. Ambassador, thank you. I'm curious why you say that the Senate's proposed bill, if it passes, would shut the program down rather than make it less effective. Why would it have to be shut down entirely? Because you fear that the CIA operatives would be under constant fear of prosecution or a civil lawsuit? Why would it have to be shut down?

AMB. NEGROPONTE: Well, I mean, what I said was that it wouldn't allow for the program –

Q: – to continue.

AMB. NEGROPONTE: – to go forward.

I think the main point that we would make is that, given – if there isn't the kind of clarity that we need, it would severely diminish the program's effectiveness to the point that the utility of continuing with the program would be called completely into question. And you know, most importantly, that is the judgment of the director of the Central Intelligence Agency after having looked at all the different angles of this.

Q: So it isn't like there are just a few things you couldn't do; you're saying that most of what you're able to do you couldn't do.

AMB. NEGROPONTE: Well, it's the question of the vagueness and the imprecision of the Geneva standards.

When you think about it, think of the domestic law as a way of giving some clarity and some definition and some crispness to what we otherwise believe is a relatively vague standard. I mean, this isn't for the purpose of evading the Geneva obligation; it's for the purpose of giving it a kind of clarity that will be meaningful to people carrying out the program.

Q: And the Senate bill takes that clarity away, or just confines you too much?

AMB. NEGROPONTE: It allows the imprecision of Geneva to persist.

Q: I see.

AMB. NEGROPONTE: Okay?

Q: Thank you.

MR. KOLTON: Next question.

Q: Hello. Obviously you're worried about the program at hand, as well you should be. The biggest concern, it seemed to me, from the Republicans in the Senate who are putting forth their own bill is how the rest of the world would perceive a change to the Geneva Conventions and the big picture and for the future. They argue that would be sort of a blank check for other

countries to make changes for their convenience and would jeopardize our troops in future conflicts. What's your thought about that?

AMB. NEGROPONTE: Well, I don't think we're giving – I don't think we're giving – this is not a question of changing Geneva, and it's not unusual at all for nations to interpret their international obligations through domestic – through the passage of domestic law. In fact, it's a fairly – I believe a fairly normal way of doing things. So I don't think that it's a question of changing it. And of course, as far as the terrorists concerns – are concerned, they don't follow Geneva in any event.

But the senior intelligence official may have something to add to this, and then I think perhaps we have time for one more question.

SENIOR INTELLIGENCE OFFICIAL: I really don't have much to add except to reinforce what the DNI said in that we are not changing Geneva; we are looking to give content to the standard to make sure that it is clear, and that we are fully complying with both Geneva and the Supreme Court's decision.

We've got time for one last question.

Q: I don't understand why you don't think the McCain bill gives protections to government personnel in the CIA program. Although it does not contain section six of the administration bill that redefined Geneva by the Detainee Treatment Act, it does, in section eight, say the provisions of the Detainee Treatment Act shall apply in respect to any criminal prosecution relating to the detention of individuals. If they're sending – stating the McCain amendment is what Common Article 3 means for the purpose of prosecution, how is that not a good enough protection for CIA folks?

AMB. NEGROPONTE: Over to you.

SENIOR INTELLIGENCE OFFICIAL: A couple of points there.

First, of course, that says nothing about the civil side of things, so you have kind of a confine in which, you know, you would be concerned about are there liabilities to these brave officers who are going head to head with the terrorists. Are they going to have the additional burden of having to worry about lawsuits, litigation, the families? And so you're putting an additional burden on these people who should be worrying about getting critical intelligence to protect America.

We also don't know, unless we define this in American law, what that would mean in terms of international law and other exposure that could arise in those situations. So I don't think that will get you there, and –

Q: But, sir, in section seven of the McCain bill, it says no person may invoke the Geneva Conventions or any protocols as an enforceable right in any civil action against an officer,

employee or member of the armed forces, or other agent of the civil government. So it eliminates a civil cause of action as well.

SENIOR INTELLIGENCE OFFICIAL: A couple of things on that.

First, I would refer you to the Detainee Treatment Act, where we certainly thought similar language, eliminated habeas actions, and the Supreme Court interpreted that to, in fact, bring habeas actions to all detainees. So sometimes the language does not have the effect that it seems to on its face, and of course that would only apply – that provision you said there – as a matter of domestic law.

MR. KOLTON: Okay. I just want to remind everyone again Director Negro Ponte was on the record. The other official, a "senior intelligence official," for background. With that, thank you both for your time.

AMB. NEGROPONTE: Thank you.

(END)